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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/775,998   | 02/10/2004  | Scott W. Bjorge      | 13506-019001        | 9094             |
| 26191  | 7590        | 02/03/2005           | EXAMINER            |                  |
| FISH & RICHARDSON P.C.<br>3300 DAIN RAUSCHER PLAZA<br>60 SOUTH SIXTH STREET<br>MINNEAPOLIS, MN 55402 |             |                      | BATSON, VICTOR D    |                  |
|  |             | ART UNIT             |                     | PAPER NUMBER     |
|  |             | 3671                 |                     |                  |

DATE MAILED: 02/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|------------------------------|------------------------|---------------------|
|                              | 10/775,998             | BJORGE, SCOTT W.    |
| Examiner                     | Art Unit               |                     |
| Victor Batson                | 3671                   |                     |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 18 October 2004.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 17-39 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 17,22,23,25,26,28,31-33,35 and 36 is/are rejected.

7)  Claim(s) 18-21,24,27,29,30,34 and 37-39 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 10 February 2004 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 11/29/04.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.

5)  Notice of Informal Patent Application (PTO-152)

6)  Other: \_\_\_\_.

***Drawings***

The drawings are objected to because In figure 3b, reference number “20” lacks a lead line. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

Claims 17-39 are objected to because of the following informalities: In claim 17 line 6, it appears that “soil a” should be changed to “a soil”. In claim 32 line 3, “the soil fracturing means” lacks proper antecedent basis. In claim 32 line 3, “aeration pockets” lacks proper antecedent basis because antecedent basis has already been established for “aeration pockets” in claim 28 line 9, and it is unclear if applicant is attempting to

establish different aeration pockets, or is applicant is referring to the aeration pockets set forth in claim 28. In claim 39 line 4, "an aeration pocket" lacks proper antecedent basis because antecedent basis has already been established for "an aeration pocket" in claim 35 lines 7-8, and it is unclear if applicant is attempting to establish different aeration pockets, or is applicant is referring to the aeration pockets set forth in claim 28. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 17,22,23,25,26,28,31,32,33,35,36 are rejected under 35 U.S.C. 102(b) as being anticipated by Cecil et al. (3,143,090).

Cecil et al. discloses a soil aerator including a frame member, a plurality of tines 55, pivotally attached to tine racks 47, with a planetary gear system (figure 4) that rotates the tine racks about their respective longitudinal axes, and about a second axis (considered the central axis that shaft 22 rotates about). The device of Cecil et al. is considered to meet the limitation of forming an aeration pocket in a compound motion, since during operation, the tines 55 move in a compound motion (about the longitudinal axis of the tine racks, and about the longitudinal axes of shaft 22). Concerning claim 25, drawbar 20 is considered a tractor hitch. The examiner notes that although the tines do not follow applicant's specific compound motion as set for in the specification, this

motion is not specifically claimed in independent claims 17,28,35. Concerning the claimed method steps, given the structure of Cecil et al., the claimed method steps would inherently be performed while using the device of Cecil et al.

***Allowable Subject Matter***

Claims 18-21,24,27,29,30,34,37-39 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art of record discloses various soil aerators.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Victor Batson whose telephone number is (703) 305-6356. The examiner can normally be reached on Monday through Friday (except Wednesday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on (703) 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

January 31, 2005



Victor Batson  
Primary Examiner  
Art Unit 3671